1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 SHADEVEN JASON HARPER, 11 Petitioner, 2:03-cv-0410-GEB-GGH-P 12 VS. 13 A.K. SCRIBNER, Warden, 14 Respondent. **ORDER** 15 16 Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of 17 appeal of this court's March 13, 2006 denial of his application for a writ of habeas corpus. 18 Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. 19 § 2253(c); Fed. R. App. P. 22(b). 20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the 21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. 22 § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues 23 satisfy" the requirement. 28 U.S.C. § 2253(c)(3). 24 A certificate of appealability should be granted for any issue that petitioner can 25 demonstrate is "debatable among jurists of reason," could be resolved differently by a different court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford, 26

290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

Petitioner has made a substantial showing of the denial of a constitutional right in the following issue presented in the instant petition: whether the trial court's denial of a motion for a trial continuance to allow attendance of a defense witness violated petitioner's Fourteenth Amendment right to due process and his Sixth Amendment right to present a defense.

Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is issued in the present action.

Dated: May 12, 2006

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge

¹ Except for the requirement that appealable issues be specifically identified, the standard for issuance of a certificate of appealability is the same as the standard that applied to issuance of a certificate of probable cause. Jennings, at 1010.